

UNCOMPLETED WORKS DEED POLL

(FOR WORKS TO A VALUE OF \$200,000.00 OR UNDER)

In favour of: Council of the City of Gold Coast
of 135 Bundall Road, Bundall in the State of Queensland
(the “**Council**”); and

Minister for Economic Development Queensland
of Level 4, 229 Elizabeth Street, Brisbane in the State of Queensland
(the “**MEDQ**”)

By: The entity named in Item 1 of Schedule A
(the “**Applicant**”)

RECITALS

- A. The Applicant applied to the Council for the PDA Development Approval referred to at Item 2 of Schedule A. The PDA Development Approval is in respect of the Land described at Item 3 of Schedule A.
- B. The PDA Development Approval requires, among other things, completion of the Uncompleted Works described at Item 4 of Schedule A.
- C. The Applicant provides this Uncompleted Works Deed Poll to the Council as part of the request for an Uncompleted Works bond with regard to the Uncompleted Works.

This Uncompleted Works Deed Poll provides:-

1. APPLICANT’S WARRANTIES

The Applicant warrants that:

- 1.1 all works required by Section 6.4.8 (Bonding of Uncompleted Works) of the *Economic Development Act 2012* Certification Procedures Manual including bulk earthworks for road formations and allotments and sewer reticulation to each lot and all erosion and sediment control meets the standards set out in the PDA Development Approval;
- 1.2 all works required by the PDA Development Approval have been completed (except for the Uncompleted Works);
- 1.3 all outstanding rates, fees and levies associated with the Land have been paid; and
- 1.4 all monetary contributions required by the PDA Development Approval have been paid.

2. VALUE OF THE UNCOMPLETED WORK

The Applicant warrants that:

- 2.1 the Value of the Uncompleted Works is the amount stated at Item 5 of Schedule A; and
- 2.2 the Value of the Uncompleted Works, including water supply and sewerage, does not exceed 50% of the Total Value of all Works (required to be completed under the Development Approval) stated at Item 6 of Schedule A.

3. BOND DOCUMENT

- 3.1 The Bond described at Item 7 of the Schedule and issued by a financial institution acceptable to the Council must be provided by the Applicant in favour of the Council in the amount stated at Item 8 of the Schedule A, being 125% of the Value of the Uncompleted Works, with this Uncompleted Works Deed Poll.
- 3.2 The Council must hold the Bond until such time as the total amount of the bond may be released, in accordance with clause 5 below.

4. COMPLETION OF THE UNCOMPLETED WORKS

- 4.1 The Applicant undertakes to complete the Uncompleted Works on or before that day which is three (3) months after the date of endorsement of the Survey Plan (referred to in Item 9 of Schedule A).
- 4.2 The Applicant grants the Council permission to enter onto the Land, with its servants, agents, contractors, sub-contractors and employees and with all necessary vehicles, plant and equipment permission in order to:-
 - 4.2.1 satisfy itself whether the Applicant is complying with its obligations under this Uncompleted Works Deed Poll; and
 - 4.2.2 satisfy itself whether the Applicant has completed any component of the Uncompleted Works.
- 4.3 If the Applicant fails to comply with the undertaking in paragraph 4.1 above, the Council may do any or all of the following:
 - 4.3.1 if the Bond is in the form of a bank guarantee, call on the bank guarantee (without interference from the Applicant) to the value of the Uncompleted Works that remain uncompleted;
 - 4.3.2 if the Bond is in the form of cash, release the cash to the value of the Uncompleted Works that remain uncompleted; and
 - 4.3.3 enter onto the Land, with its servants, agents, contractors, sub-contractors and employees and with all necessary vehicles, plant and equipment and complete the Uncompleted Works that remain uncompleted.
- 4.4 If the costs incurred by the Council in undertaking work under clause 4.3.3 above is more than the amount recovered by the Council under clause 4.3.1 or 4.3.2 above, the Applicant must pay the Council on demand the additional amount from the Applicant as a liquidated debt.
- 4.5 If the Applicant is not the owner of the land and the land is not owned by the State or a State entity:
 - 4.5.1 the name and address of the owner of the Land (the "**Landowner**") must be stated at Item 10 of Schedule A;
 - 4.5.2 the Applicant warrants that the Applicant has the Landowner's authority to permit the Council to enter onto the Land pursuant to clauses 4.2 and 4.3.3 of this Uncompleted Works Deed Poll; and
 - 4.5.3 the Applicant must provide the Council with this Uncompleted Works Deed Poll as an irrevocable authority issued by the Landowner in the form attached in Schedule B.

5. RELEASE OF BOND DOCUMENT

Within five business days of:

- 5.1 The Applicant notifying the Council of the completion of the Uncompleted Works and that it has otherwise complied with its obligations under this Deed Poll; and
- 5.2 The Council being satisfied that the Uncompleted Works have been completed and the Applicant has otherwise complied with its obligations under this Deed Poll;

The Council will return the Bond (or the reduced amount of the Bond not released to the Council under clause 4.3 above) to the applicant.

SCHEDULE A

Item	Reference	Description
1.	Applicant	(a) Name _____ (b) Address _____ _____
2.	PDA Development Approval	No. _____
3.	Land	(a) Real Property Description _____ (b) Address _____ _____
4.	Uncompleted Works	_____ _____ _____ _____
5.	Value of Uncompleted Works	\$ _____
6.	Total value of all works	\$ _____
7.	Bond	Bank guarantee
8.	Bond amount	\$ _____
9.	Survey plan	SP _____
10.	Landowner	(a) Real Property Description _____ (b) Address _____ _____

SCHEDULE B

IRREVOCABLE AUTHORITY ISSUED BY THE LANDOWNER

(Clause 4.5.3 of the Uncompleted Works Deed Poll)

ACKNOWLEDGEMENT, AUTHORITY AND RELEASE

To: Council of the City of Gold Coast
of 135 Bundall Road, Bundall in the State of Queensland
(the “**Council**”); and

By: [Insert name of owner of land]
of [insert contact address of owner of land]
(the “Landowner”)

In respect of: land located at [insert street address] and more particularly described as
[insert real property address] (the “Land”)

[Note: If the landowner is known at the date of this document, insert address of parent parcel; if the land has already be subdivided at the date of this document, insert address of lot to be transferred.]

And in respect of: [insert name of Development Proponent] (the “Development Proponent”),
being the developer of the Land and who is to make application for a PDA
Development Approval.

Dated: [insert date of signing]

If the Landowner is not the registered owner of the Land at the date of this Acknowledgement, Authority and Release this Acknowledgement, Authority and Release takes effect from the date of transfer of the Land to the Landowner.

The Landowner acknowledges that the Council [has sealed a plan of subdivision creating the Land / has been requested to seal a plan of subdivision in respect of the Land] before the Developer has completed all the works (the “Uncompleted Works”) required to be undertaken in respect of the PDA Development Approval. A list of the Uncompleted Works is attached to this Acknowledgement, Authority and Release and marked “**A**”.

The Developer has entered into a deed poll with the Council to enter onto the Land with or without its employees, contractors, sub-contractors, agents and servants and with all necessary vehicles, plant and equipment:-

1. to satisfy itself whether the Developer is complying with its obligations under the Uncompleted Works Deed Poll;
2. to satisfy itself whether the Developer has completed any component of the Uncompleted Works;
3. if necessary, in order to complete the Uncompleted Works in accordance with the Uncompleted Works Deed Poll.

The Landowner irrevocably releases the Council and the Council’s employees, contractors, sub-contractors, agents and servants from any liability, loss, penalties, payments, costs, charges and expenses directly or indirectly arising from or incurred in connection with the Council doing anything the Council is required or entitled to do under the Uncompleted Works Deed Poll (except where arising from the negligent act or omission of the Council or the Council’s employees, contractors, sub-contractors, agents and servants).

If the Landowner sells or otherwise disposes of or grants an interest in the Land to another person, the Landowner will obtain from that person an irrevocable authority, acknowledgement or release in the same terms as this Authority, Acknowledgement and Release and will provide it to the Council prior to the completion of the sale or disposition or transfer of the interest.

The Landowner must not (prior to the completion of the Uncompleted Works) sell or transfer the land without obtaining from the purchaser or transferee (and giving to the Council) an irrevocable authority, acknowledgement and release in the same terms as the Authority, Acknowledgement and Release.

EXECUTED by

[COMPANY NAME AND ACN], in accordance with section 127 of the *Corporations Act 2001* on this **[insert date]** day of **[insert month]** **[insert year]**:

Director

Director/Secretary

EXECUTED AS A DEED POLL BY THE APPLICANT

*****Note: Redundant signing clause to be deleted**

EXECUTED as a DEED POLL BY)
[INSERT NAME OF COMPANY AND ACN])
 this day of 20.... In)
 accordance with the *Corporations Act 2001*)
)
)

 Director

 Director / Secretary

SIGNED SEALED AND DELIVERED by)
[NAME], in the presence of:)
)
)

 (Witness – Signature)

 (Signature)

 (Witness – Print Name)

on:

 (Date)

Disclaimer

The information collected on this Agreement will be used by the Council of the City of Gold Coast (Council) in accordance with the assessment of your PDA development application and in relation to the works that may be undertaken in accordance with a PDA development approval that is issued. Your personal details will not be disclosed for a purpose outside the planning process, except where required by legislation including the Right to Information Act 2009) or required by Parliament. This information may be stored in a Council database. The information collected will be retained as required by the Public Records Act 2002. Its contents should not be construed that the Council would approve or refuse this application.

UNCOMPLETED WORKS GUARANTEE AND UNDERTAKING

BY: the financial institution stated at Item 1 of the Schedule (the "Obligor")

TO: Council of the City of Gold Coast
of 135 Bundall Road, Bundall in the State of Queensland
(the "**Council**"); and

FOR: security for completion of the Uncompleted Works stated at Item 2 of the Schedule under the PDA Development Approval stated at Item 3 of the Schedule by or on behalf of the Developer stated at Item 4 of the Schedule

AT THE REQUEST OF: the Developer

AND IN CONSIDERATION OF: Council accepting this guarantee and undertaking

The Obligor **UNCONDITIONALLY GURANTEES AND UNDERTAKES** to pay Council on demand from time to time any sum or sums to an aggregate amount not exceeding the Security Sum stated at Item 5 in the Schedule on the following terms and conditions:

1. any payment or payments made by the Obligor to Council must be made:
 - (a) without reference to the Developer;
 - (b) even if the Obligor has received notification from the Developer or any person purporting to act on the Developer's behalf that the payment or payments should not be made; and
 - (c) without regard to the performance or non-performance of the Developer's obligations under the PDA Development Approval.
2. any variation of the PDA Development Approval or any agreement or arrangement between Council and the Developer relating to the PDA Development Approval will not impair or discharge the Obligor's liability under this guarantee and undertaking;
3. Council may at any time give notice to the Obligor reducing the Security Sum. The reduced sum specified in that notice will constitute the Security Sum;
4. this guarantee and undertaking will remain in force until either:
 - (a) the Obligor is given notice by Council that the guarantee and undertaking is not longer required;
 - (b) Council posts this guarantee and undertaking to the Obligor by registered post at the address stated at Item 1 of the Schedule; or
 - (c) the Obligor pays to EDQ the whole of or the balance outstanding of the Security Sum;
5. the Obligor may terminate this guarantee and understanding at any time by paying to Council the balance outstanding of the Security Sum;
6. for the purposes of clauses 4(c) and 5 of this guarantee and undertaking, the balance outstanding of the Security Sum shall be that amount certified by Council;
7. all payments under this guarantee and undertaking shall be made to Council at its principal place of business, as stated on this document; and

8. any demand, notice or certification to be made by Council will be in writing under the hand of either a solicitor engaged by Council or [insert occupation of delegate] employed by Council.

SCHEDULE

Item	Agreement Reference	Agreement Description
1.	OBLIGOR	(a) Name _____ (b) Address _____ _____
2.	UNCOMPLETED WORKS	_____ _____ _____
3.	PDA DEVELOPMENT APPROVAL	No. _____
4.	DEVELOPER	(a) Name _____ (b) Address _____ _____
5.	SECURITY SUM	\$ _____